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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

## REGULATION 14E

Note: For the scope of and definitions applicable to Regulation 14E, refer to §240.14d-1.

Unlawful Tender Offer Practices.

Reg. §240.14e-1.

As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices within the meaning of section 14(e) of the Act, no person who makes a tender offer shall:

(a) Hold such tender offer open for less than twenty business days from the date such tender offer is first published or sent to security holders; provided, however, that if the tender offer involves a roll-up transaction as defined in Item 901(c) of Regulation S-K (17 CFR 229.901(c)) and the securities being offered are registered (or authorized to be registered) on Form S-4 (17 CFR 229.25) or Form F-4 (17 CFR 229.34), the offer shall not be open for less than sixty calendar days from the date the tender offer is first published or sent to security holders;

(b) Increase or decrease the percentage of the class of securities being sought or the consideration offered or the dealer's soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase or decrease is first published or sent or given to security holders; Provided, however, That, for purposes of this paragraph, the acceptance for payment of an additional amount of securities not to exceed two percent of the class of securities that is the subject of the tender offer shall not be deemed to be an increase. For purposes of this paragraph, the percentage of a class of securities shall be calculated in accordance with section 14(d)(3) of the Act.

(c) Fail to pay the consideration offered or return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of a tender offer. This paragraph does not prohibit a bidder electing to offer a subsequent offering period under §240.14d-11 from paying for securities during the subsequent offering period in accordance with that section.

(d) Extend the length of a tender offer without issuing a notice of such extension by press release or other public announcement, which notice shall include disclosure of the approximate number of securities deposited to date and shall be issued no later than the earlier of: (i) 9:00 a.m. Eastern time, on the next business day after the scheduled expiration date of the offer or (ii), if the class of securities which is the subject of the tender offer is registered on one or more national securities exchanges, the first opening of any one of such exchanges on the next business day after the scheduled expiration date of the offer.

(e) The periods of time required by paragraphs (a) and (b) of this section shall be tolled for any period during which the bidder has failed to file in electronic format, absent a hardship exemption (§§ 232.201 and 232.202 of this chapter), the Schedule 14D-1 Tender Offer Statement (§240.14d-100 of this chapter), any tender offer material specified in paragraph (a) of Item 11 of that Schedule, and any amendments thereto. If such documents were filed in paper pursuant to a hardship exemption (see §232.201 and §232.202(d) of this chapter), the minimum offering periods shall be tolled for any period during which a required confirming electronic copy of such Schedule and tender offer material is delinquent.

#### Position of Subject Company with Respect to a Tender Offer.

Reg. §240.14e-2.

(a) Position of subject company. As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices within the meaning of section 14(e) of the Act, the subject company, no later than 10 business days from the date the tender offer is first published or sent or given, shall publish, send or give to security holders a statement disclosing that the subject company:

- (1) Recommends acceptance or rejection of the bidder's tender offer;
- (2) Expresses no opinion and is remaining neutral toward the bidder's tender offer; or
- (3) Is unable to take a position with respect to the bidder's tender offer.

Such statement shall also include the reason(s) for the position (including the inability to take a position) disclosed therein.

(b) Material change. If any material change occurs in the disclosure required by paragraph (a) of this section, the subject company shall promptly publish, send or give a statement disclosing such material change to security holders.

(c) Any issuer, a class of the securities of which is the subject of a tender offer filed with the Commission on Schedule 14D-1F and conducted in reliance upon and in conformity with Rule 14d-1(b) under the Act, and any director or officer of such issuer where so required by the laws, regulations and policies of Canada and/or any of its provinces or territories, in lieu of the statements called for by paragraph (a) of this section and Rule 14d-9 under the Act, shall file with the Commission on Schedule 14D-9F the

entire disclosure document(s) required to be furnished to holders of securities of the subject issuer by the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the tender offer, and shall disseminate such document(s) in the United States in accordance with such laws, regulations and policies.

(d) Exemption for cross-border tender offers. The subject company shall be exempt from this section with respect to a tender offer conducted under §240.14d-1(c).

Transactions in Securities on the Basis of Material, Nonpublic Information in the Context of Tender Offers.  
Reg. §240.14e-3.

(a) If any person has taken a substantial step or steps to commence, or has commenced, a tender offer (the “offering person”), it shall constitute a fraudulent, deceptive or manipulative act or practice within the meaning of section 14(e) of the Act for any other person who is in possession of material information relating to such tender offer which information he knows or has reason to know is nonpublic and which he knows or has reason to know has been acquired directly or indirectly from:

- (1) The offering person,
- (2) The issuer of the securities sought or to be sought by such tender offer, or

(3) Any officer, director, partner or employee or any other person acting on behalf of the offering person or such issuer, to purchase or sell or cause to be purchased or sold any of such securities or any securities convertible into or exchangeable for any such securities or any option or right to obtain or to dispose of any of the foregoing securities, unless within a reasonable time prior to any purchase or sale such information and its source are publicly disclosed by press release or otherwise.

(b) A person other than a natural person shall not violate paragraph (a) of this section if such persons shows that:

(1) The individual(s) making the investment decision on behalf of such person to purchase or sell any security described in paragraph (a) of this section or to cause any such security to be purchased or sold by or on behalf of others did not know the material, nonpublic information; and

(2) Such person had implemented one or a combination of policies and procedures, reasonable under the circumstances, taking into consideration the nature of the person’s business, to ensure that individual(s) making investment decision(s) would not violate paragraph (a) of this section, which policies and procedures may include, but are not limited to, (i) those which restrict any purchase, sale and causing any purchase and sale of any such security or (ii) those which prevent such individual(s) from knowing such information.

(c) Notwithstanding anything in paragraph (a) of this section to the contrary, the following transactions shall not be violations of paragraph (a) of this section:

(1) Purchase(s) of any security described in paragraph (a) of this section by a broker or by another agent on behalf of an offering person; or

(2) Sale(s) by any person of any security described in paragraph (a) of this section to the offering person.

(d) (1) As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices within the meaning of section 14(e) of the Act, it shall be unlawful for any person described in paragraph (d)(2) of this section to communicate material, nonpublic information relating to a tender offer to any other person under circumstances in which it is reasonably foreseeable that such communication is likely to result in a violation of this section except that this paragraph shall not apply to a communication made in good faith,

(i) To the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;

(ii) To the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons, involved in the planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or

(iii) To any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

(2) The persons referred to in paragraph (d)(1) of this section are:

(i) The offering person or its officers, directors, partners, employees or advisors;

(ii) The issuer of the securities sought or to be sought by such tender offer or its officers, directors, partners, employees or advisors;

(iii) Anyone acting on behalf of the persons in paragraph (d)(2)(i) of this section or the issuer or persons in paragraph (d)(2)(ii) of this section; and

(iv) Any person in possession of material information relating to a tender offer which information he knows or has reason to know is nonpublic and which he knows or has reason to know has been acquired directly or indirectly from any of the above.

#### Prohibited Transactions in Connection With Partial Tender Offers.

Reg. § 240.14e-4.

(a) Definitions. For purposes of this section:

(1) The amount of a person's net long position in a subject security shall equal the excess, if any, of such person's "long position" over such person's short position." For the purpose of determining the net long position as of the end of the proration period and for tendering concurrently to two or more partial tender offers, securities that have been tendered in accordance with the Rule and not withdrawn are deemed to be part of the person's long position.

(i) Such person's long position, is the amount of subject securities that such

person:

(A) Or his agent has title to or would have title to but for having lent such securities; or

(B) Has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase but has not yet received; or

(C) Has exercised a standardized call option for; or

(D) Has converted, exchanged or exercised an equivalent security for; or

(E) Is entitled to receive upon conversion, exchange, or exercise of an equivalent security.

(ii) Such person's short position, is the amount of subject securities or subject securities underlying equivalent securities that such person:

(A) Has sold, or has entered into an unconditional contract, binding on both parties thereto, to sell; or

(B) Has borrowed; or

(C) Has written a non-standardized call option, or granted any other right pursuant to which his shares may be tendered by another person; or

(D) Is obligated to deliver upon exercise of a standardized call option sold on or after the date that a tender offer is first publicly announced or otherwise made known by the bidder to holders of the security to be acquired, if the exercise price of such option is lower than the highest tender offer price or stated amount of the consideration offered for the subject security. For the purpose of this paragraph, if one or more tender offers for the same security are ongoing on such date, the announcement date shall be that of the first announced offer.

(2) The term equivalent security means:

(i) any security (including any option, warrant, or other right to purchase the subject security), issued by the person whose securities are the subject of the offer, that is immediately convertible into, or exchangeable or exercisable for, a subject security, or

(ii) any other right or option (other than a standardized call option) that entitles the holder thereof to acquire a subject security, but only if the holder thereof reasonably believes that the maker or writer of the right or option has title to and possession of the subject security and upon exercise will promptly deliver the subject security.

(3) the term subject security means a security that is the subject of any tender offer or request or invitation for tenders.

(4) For purpose of this rule, a person shall be deemed to tender a security if he:

(i) Delivers a subject security pursuant to an offer,

- (ii) Causes such delivery to be made,
- (iii) Guarantees delivery of a subject security pursuant to a tender offer,
- (iv) Causes a guarantee of such delivery to be given by another person, or

Uses any other method by which acceptance of a tender offer may be made.

(5) The term partial tender offer means a tender offer or request or invitation for tenders for less than all of the outstanding securities subject to the offer in which tenders are accepted either by lot or on a pro rata basis for a specified period, or a tender offer for all of the outstanding shares that offers a choice of consideration in which tenders for different forms of consideration may be accepted either by lot or on a pro rata basis for a specified period.

(6) The term standardized call option means any call option that is traded on an exchange, or for which quotation information is disseminated in an electronic interdealer quotation system of a registered national securities association.

(b) It shall be unlawful for any person acting alone or in concert with others, directly or indirectly, to tender any subject security in a partial offer:

(1) For his own account unless at the time of tender, and at the end of the proration period or period during which securities are accepted by lot (including any extensions thereof), he has a net long position equal to or greater than the amount tendered in:

(i) the subject security and will deliver or cause to be delivered such security for the purpose of tender to the person making the offer within the period specified in the offer; or

(ii) an equivalent security and, upon the acceptance of this tender will acquire the subject security by conversion, exchange, or exercise of such equivalent security to the extent required by the terms of the offer, and will deliver or cause to be delivered the subject security so acquired for the purpose of tender to the person making the offer within the period specified in the offer; or

(2) For the account of another person unless the person making the tender:

(i) Possesses the subject security or an equivalent security, or

(ii) Has a reasonable belief that, upon information furnished by the person on whose behalf the tender is made, such person owns the subject security or an equivalent security and will promptly deliver the subject security or such equivalent security for the purpose of tender to the person making the tender.

(c) The rule shall not prohibit any transaction or transactions which the Commission, upon written request or upon its own motion, exempts, either unconditionally or on specified terms and conditions.

## Prohibiting Purchases Outside of a Tender Offer.

### Reg. §240.14e-5

(a) Unlawful activity. As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices in connection with a tender offer for equity securities, no covered person may directly or indirectly purchase or arrange to purchase any subject securities or any related securities except as part of the tender offer. This prohibition applies from the time of public announcement of the tender offer until the tender offer expires. This prohibition does not apply to any purchases or arrangements to purchase made during the time of any subsequent offering period as provided for in §240.14d-11 if the consideration paid or to be paid for the purchases or arrangements to purchase is the same in form and amount as the consideration offered in the tender offer.

(b) Excepted activity. The following transactions in subject securities or related securities are not prohibited by paragraph (a) of this section:

(1) Exercises of securities. Transactions by covered persons to convert, exchange, or exercise related securities into subject securities, if the covered person owned the related securities before public announcement;

(2) Purchases for plans. Purchases or arrangements to purchase by or for a plan that are made by an agent independent of the issuer;

(3) Purchases during odd-lot offers. Purchases or arrangements to purchase if the tender offer is excepted under §240.13e-4(h)(5);

(4) Purchases as intermediary. Purchases by or through a dealer-manager or its affiliates that are made in the ordinary course of business and made either:

(i) On an agency basis not for a covered person; or

(ii) As principal for its own account if the dealer-manager or its affiliate is not a market maker, and the purchase is made to offset a contemporaneous sale after having received an unsolicited order to buy from a customer who is not a covered person;

(5) Basket transactions. Purchases or arrangements to purchase a basket of securities containing a subject security or a related security if the following conditions are satisfied:

(i) The purchase or arrangement to purchase is made in the ordinary course of business and not to facilitate the tender offer;

(ii) The basket contains 20 or more securities; and

(iii) Covered securities and related securities do not comprise more than 5% of the value of the basket;

(6) Covering transactions. Purchases or arrangements to purchase that are made to satisfy an obligation to deliver a subject security or a related security arising from a short sale or from the exercise of an option by a non-covered person if:

(i) The short sale or option transaction was made in the ordinary course of business and not to facilitate the offer;

(ii) In the case of a short sale, the short sale was entered into before public announcement of the tender offer; and

(iii) In the case of an exercise of an option, the covered person wrote the option before public announcement of the tender offer;

(7) Purchases pursuant to contractual obligations. Purchases or arrangements to purchase pursuant to a contract if the following conditions are satisfied:

(i) The contract was entered into before public announcement of the tender offer;

(ii) The contract is unconditional and binding on both parties; and

(iii) The existence of the contract and all material terms including quantity, price and parties are disclosed in the offering materials;

(8) Purchases or arrangements to purchase by an affiliate of the dealer-manager. Purchases or arrangements to purchase by an affiliate of a dealer-manager if the following conditions are satisfied:

(i) The dealer-manager maintains and enforces written policies and procedures reasonably designed to prevent the flow of information to or from the affiliate that might result in a violation of the federal securities laws and regulations;

(ii) The dealer-manager is registered as a broker or dealer under Section 15(a) of the Act;

(iii) The affiliate has no officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support personnel) in common with the dealer-manager that direct, effect, or recommend transactions in securities; and

(iv) The purchases or arrangements to purchase are not made to facilitate the tender offer;

(9) Purchases by connected exempt market makers or connected exempt principal traders. Purchases or arrangements to purchase if the following conditions are satisfied:

(i) The issuer of the subject security is a foreign private issuer, as defined in §240.3b-4(c);

(ii) The tender offer is subject to the United Kingdom's City Code on Takeovers and Mergers;

(iii) The purchase or arrangement to purchase is effected by a connected exempt market maker or a connected exempt principal trader, as those terms are used in the United Kingdom's City Code on Takeovers and Mergers;

(iv) The connected exempt market maker or the connected exempt principal



trader complies with the applicable provisions of the United Kingdom's City Code on Takeovers and Mergers; and

(v) The tender offer documents disclose the identity of the connected exempt market maker or the connected exempt principal trader and disclose, or describe how U.S. security holders can obtain, information regarding market making or principal purchases by such market maker or principal trader to the extent that this information is required to be made public in the United Kingdom; and

(10) Purchases during cross-border tender offers. Purchases or arrangements to purchase if the following conditions are satisfied:

(i) The tender offer is excepted under §240.13e-4(h)(8) or §240.14d-1(c);

(ii) The offering documents furnished to U.S. holders prominently disclose the possibility of any purchases, or arrangements to purchase, or the intent to make such purchases;

(iii) The offering documents disclose the manner in which any information about any such purchases or arrangements to purchase will be disclosed;

(iv) The offeror discloses information in the United States about any such purchases or arrangements to purchase in a manner comparable to the disclosure made in the home jurisdiction, as defined in §240.13e-4(i)(3); and

(v) The purchases comply with the applicable tender offer laws and regulations of the home jurisdiction.

(c) Definitions. For purposes of this section, the term:

(1) Affiliate has the same meaning as in §240.12b-2;

(2) Agent independent of the issuer has the same meaning as in §242.100(b) of this chapter;

(3) Covered person means:

(i) The offeror and its affiliates;

(ii) The offeror's dealer-manager and its affiliates;

(iii) Any advisor to any of the persons specified in paragraph (c)(3)(i) and (ii) of this section, whose compensation is dependent on the completion of the offer; and

(iv) Any person acting, directly or indirectly, in concert with any of the persons specified in this paragraph (c)(3) in connection with any purchase or arrangement to purchase any subject securities or any related securities;

(4) Plan has the same meaning as in §242.100(b) of this chapter;

(5) Public announcement is any oral or written communication by the offeror or any person authorized to act on the offeror's behalf that is reasonably designed to, or has the effect of, informing

the public or security holders in general about the tender offer;

(6) Related securities means securities that are immediately convertible into, exchangeable for, or exercisable for subject securities; and

(7) Subject securities has the same meaning as in §229.1000 of this chapter.

(d) Exemptive authority. Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms or conditions, to any transaction or class of transactions or any security or class of security, or any person or class of persons.

#### Repurchase Offers by Certain Closed-End Registered Investment Companies.

Reg. §240.14e-6.

Sections 240.14e-1 and 240.14e-2 shall not apply to any offer by a closed-end management investment company to repurchase equity securities of which it is the issuer pursuant to §270.23c-3 of this chapter.

#### Unlawful tender offer practices in connection with roll-ups.

Reg. §240.14e-7.

In order to implement Section 14(h) of the Act (15 U.S.C. 78n(h)):

(a) (1) It shall be unlawful for any person to receive compensation for soliciting tenders directly from security holders in connection with a roll-up transaction as provided in paragraph (a)(2) of this section, if the compensation is:

(i) Based on whether the solicited person participates in the tender offer; or

(ii) Contingent on the success of the tender offer.

(2) Paragraph (a)(1) of this section is applicable to a roll-up transaction as defined in Item 901(c) of Regulation S-K (§229.901(c) of this chapter), structured as a tender offer, except for a transaction involving only:

(i) Finite-life entities that are not limited partnerships;

(ii) Partnerships whose investors will receive new securities or securities in another entity that are not reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Act (15 U.S.C. 78k-1); or

(iii) Partnerships whose investors' securities are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the

Act (15 U.S.C. 78k-1).

(b) (1) It shall be unlawful for any finite-life entity that is the subject of a roll-up transaction as provided in paragraph (b)(2) of this section to fail to provide a security holder list or mail communications related to a tender offer that is in furtherance of the roll-up transaction, at the option of a requesting security holder, pursuant to the procedures set forth in §240.14a-7.

(2) Paragraph (b)(1) of this section is applicable to a roll-up transaction as defined in Item 901(c) of Regulation S-K (§229.901(c) of this chapter), structured as a tender offer, that involves:

(i) An entity with securities registered pursuant to Section 12 of the Act (15 U.S.C. 78l); or

(ii) A limited partnership, unless the transaction involves only:

(A) Partnerships whose investors will receive new securities or securities in another entity that are not reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Act (15 U.S.C. 78k-1); or

(B) Partnerships whose investors' securities are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Act (15 U.S.C. 78k-1).

#### Prohibited Conduct in Connection with Pre-Commencement Communications.

Reg. §240.14e-8

It is a fraudulent, deceptive or manipulative act or practice within the meaning of section 14(e) of the Act (15 U.S.C. 78n) for any person to publicly announce that the person (or a party on whose behalf the person is acting) plans to make a tender offer that has not yet been commenced, if the person:

(a) Is making the announcement of a potential tender offer without the intention to commence the offer within a reasonable time and complete the offer;

(b) Intends, directly or indirectly, for the announcement to manipulate the market price of the stock of the bidder or subject company; or

(c) Does not have the reasonable belief that the person will have the means to purchase securities to complete the offer.

#### Change in Majority of Directors.

Reg. §240.14f-1.

If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to section 13(d) or 14(d) of the Act, any persons are to be elected or designated as

directors of the issuer, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the issuer, then, not less than 10 days prior to the date any such person takes office as a director, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor, the issuer shall file with the Commission and transmit to all holders of record of securities of the issuer who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by Items 6(a), (d), and (e), 7 and 8 of Schedule 14A of Regulation 14A (§240.14a-101 of this chapter) to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders.

Eight copies of such information shall be filed with the Commission.